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Recent Decision

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ceased trustee. Except as the rule may be changed by statute,¹⁵ or by provision of the trust instrument, the office of a trustee of personalty devolves on his executors or administrator,¹⁶ and that of a trustee of realty on his heirs. Therefore, we arrive at the conclusion that in some jurisdictions, it is the rule, sometimes confirmed by statute, that the legal representatives of a sole or surviving trustee are entitled to the trust estate for the purposes of administering it,¹⁷ in other jurisdictions it has been held that the execution of the trust does not devolve on the legal representatives of the deceased trustee,¹⁸ and that the legal representatives occupy the position of a bailee charged only with the duty of preserving the property intact for the purpose of turning it over to the persons entitled.

James E. Bales.

RECENT DECISION

ADOPTION—LIABILITY OF NATURAL PARENT TO SUPPORT CHILD ADOPTED BY ANOTHER PERSON.—In a recent Illinois case, *Dwyer v. Dwyer*, 336 Ill. 630, 10 N. E. (2d) 344 (1937), the supreme court of Illinois held that a natural parent is obliged to support his child who has been adopted by another person. In 1927, Frances Dwyer procured a divorce from the defendant. They had a minor child about three years of age, and by the consent of both parents, the child was adopted by the maternal grandparents prior to the entry of the divorce decree. Alimony was waived, in the divorce proceedings, and the decree made no provision therefor, or for the support of the child. The grandfather died in 1931, insolvent, and, in 1933, the grandmother remarried and moved to Texas. Thereafter, the plaintiff supported the child. In December, 1934, she adopted the child, and shortly thereafter, brought an action against defendant for an order of support for the child. He claimed nonliability because of the adoption proceedings. His contention was that when his child was adopted by others, he was, by the terms of the adoption act, relieved of all duties and obligations to thereafter support it. Section 3 of the *Adoption Act* provides that an adopted child is, to all legal intents and purposes, the child of the adopter. ILL. REV. STAT. (1935) c. 4, § 3. Section 5 provides that he may inherit from the adopter and enjoy all the legal consequences and incidents of the natural relation of parents and children, the same as if he had been born to them in lawful wedlock, except that he cannot inherit property expressly limited to the body or bodies of the parents by adoption, nor property from the lineal or collateral kindred of such parents by right of representation. Section 8 provides that the natural parents of a child so adopted shall be deprived, by the decree, of all legal rights, as respects the child, and the child shall be freed from all obligations of maintenance and obedience as respects such parents. The supreme court ruled against the defendant's contention

¹⁵ In re Gay's Estate, 138 Cal. 552, 71 Pac. 707 (1903); Allison v. Little, 85 Ala. 512, 5 So. 221 (1889).

¹⁶ Friedley v. Security Trust & Safe Deposit Co., 10 Del. Ch. 74, 84 Atl. 883 (1912).

¹⁷ Shannon v. Davis, 64 Miss. 717, 2 So. 240 (1887).

¹⁸ In re Gay's Estate, *op. cit. supra* note 15.

and ordered him to pay ten dollars a week for the support of the child. The court said: "The statute does not provide that an adoption relieves the natural parents of their duty to support their offspring. The only express provision of the statute as to the respective rights and duties of natural parents and their children is found in section 8. An adoption of a child does not work a complete severance in the relationship between the child and its natural parents. The duty of a parent to support his minor child arises out of the natural relationship, and while that duty may also be imposed upon the adoptive parents by statutory enactment, the natural parent may, if necessity arises, be required to perform that duty. The primary duty of the adoptive parents to support is in derogation of the general law, and it is for that reason that, as to the adopted child, the statute must be strictly construed. The statute is not to be construed as relieving the natural parents from all obligation to support their minor children."

The duty of the natural parent to support his child after adoption by another person rests on two points. First, the construction of the local statutes. Does the local statute sever the parent from the child and release him from all obligations altogether, or does it merely superimpose the duty of support upon the adopting parent? If just the latter, the natural parent also has the duty of support. The validity of the adoption depends upon the law of the state where the adoption took place, but the rights and liabilities depend upon the law of the state in which the child and adoptive parents are domiciled. This is to be remembered if the child was adopted in another state. The first state merely determines the status, the second state, the right and liabilities. Some states say that a natural parent by consent to the adoption relinquishes all parental rights, and is relieved of all parental duties and obligations; but in other states the rights and obligations of natural parents with respect to the child are altered only so far as the statute undertakes to change them. In *Dwyer v. Dwyer* the court construed the statute strictly. At common law, there was no adoption. The basis of the obligation to support arises out of the natural relationship of parent and child. Apart from the natural relationship, there is no duty to support. Since the statute was in derogation of the general law, the court held it must be construed strictly and said it did not work a complete severance of the natural relationship, but simply imposed the duty of support upon the adoptive parents also. So if the local statute is construed as working a complete severance of the relationship between the natural parent and child, the duty to support ceases with the severance. But if the statute does not work a severance, the obligation to support continues. If the obligation to support continues, then we must consider the next point, which is, Has the necessity arisen? By that is meant, Has a situation arisen in which it becomes necessary for the natural parent to support his child adopted by others? In the Illinois case, such a situation had arisen. The adoptive father had died insolvent, and the adoptive mother had remarried and left the state. Then the natural mother adopted the child. Obviously being without funds, and no provision having been made in the divorce decree for alimony, the mother appealed to the court. The court, deeming that the necessity had arisen, ordered the defendant, the natural father, to support the child.

In a prior case, *McNemar v. McNemar*, 137 Ill. App. 504 (1907), the supreme court said: "The statute does not in terms or by implication attempt to relieve a natural parent from the duty he owes his child to care for and support him. The aim and purpose of the statute was not to destroy or impair the relation that exists between parent and child, but rather to preserve and continue it. The relation of parent and child is not ended by the adoption, but fostered instead, and since the father is primarily liable for the support and care of his own child, we hold that the natural father cannot recover for the care and support of his child while in his own home and custody, against a parent by adoption, in the absence of an express agreement to pay."

But most states hold that adoption works a complete severance of the relationship between the natural parent and child. In *In re Masterson's Estate*, 45 Wash. 48, 87 Pac. 1047 (1906), the court held a complete severance resulted from an adoption. In that case, the adoptive mother of the child died, and her daughter petitioned for appointment. The natural mother of the child opposed the petition and sought the appointment herself. The court granted the appointment to the daughter of the adoptive mother, saying that the natural parent, by her voluntary act in consenting to the adoption of her child by another, became divested of all legal rights and obligations in respect to such child, and the situation was not changed by the death of the adoptive parent. A necessary inference would be that the natural parent was also divested of her obligation to support the child.

To the same effect is *In re Macrae*, 189 N. Y. 142, 81 N. E. 956 (1907). The New York statute provided that "after adoption, the parents of the minor are relieved from all parental duties toward, and of all responsibility for, and have no rights over such child, or to his property by descent or succession." The court held that the effect of adoption is to sever completely the relations of the natural parents and the child, and they ruled that in the case of a second adoption after the death of the foster parents, it is not necessary to give notice or to obtain the consent of the natural parents or the survivor of them as was required by law in the first adoption. But in *Betz v. Harr*, 294 N. Y. S. 546, 250 App. Div. 457 (1937), the court ordered the natural father to support an adult child, after adoption, who was likely to become a public charge. A statute placed this liability upon the natural parent, and the court said the adoption did not release him from his statutory duties, but only his legal duties. The court stated that "while there was a moral duty to support adult children unable to support themselves, the common law did not recognize or enforce it. The statute, however, which rests upon a prior moral obligation, imposes such a duty upon a parent if he or she is of sufficient ability and the child is the recipient of public relief or likely to become a public charge. Where the child has been adopted the duty to support it is cast in the first instance upon the foster parents. But here the surviving foster parent is destitute, and the surviving natural parent is able to contribute to the daughter's support. If he does not do so, the public must. The object of the statute is to protect the public from loss and transform this imperfect moral duty into a statutory and legal liability. Therefore, under the statute, the natural parent is required to contribute to his daughter's support. Nor is he relieved of that duty by the adoption. The statute permitting adoption must be strictly construed, and the paternal duties mentioned in the statute, of which the natural parents are relieved, are the recognized legal obligations that flow from the relationship of parent and child. Obviously, they do not include the obligation to support an adult child, for not until the enactment of the statute, and then only under the conditions defined therein, was a parent under a legal duty to support an adult child. This is a statutory duty based on a moral obligation which is imposed on the parent and it must be deemed to survive the adoption of the child. Any other construction would be repugnant to the policy of the law. It is not to be presumed that the legislature intended, in the event the adoptive parents died or became destitute, to relieve the natural parents of their moral obligation to support their helpless offspring and to impose that burden upon the public when the natural parents are capable of discharging it. Such construction of intention assumes that the legislature intended to act contrary to natural law. We may not so presume."

In *Mitchell v. Brown*, 18 Cal. App. 117, 122 Pac. 426 (1912), the court said that the legal effect of adoption was to disrobe the natural parents of all paternal or any authority over the minor. The natural parents of the child, from the time of her adoption, were relieved of all parental duties towards, and all re-